

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JENNIFER FLOWERS,

Plaintiff,

v.

WALMART, INC.,

Defendant.

Case No. _____

**DEFENDANT'S NOTICE OF
REMOVAL**

(DISTRICT COURT OF OTOE COUNTY,
NEBRASKA, CASE NO. CI 24-85)

Defendant, Walmart, Inc. ("Defendant"), without waiving any available defenses, including those afforded by Rule 12 of the Federal Rules of Civil Procedure, hereby removes this action from the District Court of Otoe County, Nebraska, Case No. CI 24-85, to the United States District Court for the District of Nebraska, pursuant to 28 U.S.C. §§ 1332 and 1441(a). In support of this Notice, Defendant states as follows:

1. Defendant removes this action to federal court based upon this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

a. First, there is diversity of citizenship because the controversy exists between parties that are from entirely different states. 28 U.S.C. § 1332(a)(1).

i. Plaintiff, Jennifer Flowers ("Plaintiff"), "is a resident of Lincoln, Lancaster County, Nebraska," and, therefore, a citizen of Nebraska. (Ex. A – Plaintiff's Complaint at 1 ¶ 1). Upon information and belief, Plaintiff intends to remain a resident of such locale. Therefore, Plaintiff is a citizen of the State of Nebraska. *See Wagstaff & Cartmell, LLP v. Lewis*, 40 F.4th 830, 830 (8th Cir. 2022) ("For

purposes of federal jurisdiction, ‘domicile’ and ‘citizenship’ are synonymous terms. To establish domicile, an individual must both be physically present in the state and have an intent to make his home there indefinitely.”) (internal quotations omitted).

- ii. Defendant “is a foreign corporation.” (Ex. A at 1, ¶ 2). More specifically, Walmart is a Delaware corporation with its principal place of business in Bentonville, Arkansas. (Ex. C – Decl. of Kiley N. Schmidt in Support of Defendant’s Notice of Removal (“Schmidt Decl.”) at 1-2, ¶¶ 5-6; Ex. 1 at 1). As such, Walmart is a citizen of a state other than Nebraska. See 28 U.S.C. § 1332(a)(1).
- iii. Because Defendant is a citizen of a state other than Nebraska, there is complete diversity of citizenship between the parties to this action. See 28 U.S.C. 1332(a)(1).

b. Additionally, the amount in controversy in this action exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

- i. In the Complaint, Plaintiff alleges that she incurred “[p]ast medical expenses in at least \$138,720.60.” (Ex. A at 3, ¶ 16(a)). She also alleges that she sustained g “[l]ost wages and job loss in at least \$38,974.32,” temporary and permanent physical damages; future medical expenses and, and “future general damages in an amount to be determined at trial.” (Ex. A at 3, ¶ 16(e)).
- ii. Due to the amount of Plaintiff’s alleged past medical expenses as well as the nature of the future and additional damages pleaded,

Defendant has a good faith belief that the amount in controversy exceed the value of \$75,000.00, exclusive of interest and costs.

See Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 89, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (“In sum, as specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”).

2. Defendant removes this matter within the permissible time period pursuant to 28 U.S.C. § 1446.

- a. Plaintiff filed her Complaint on April 18, 2024, in the District Court of Otoe County, Nebraska. (Ex. A at 1).
- b. Defendant received service of the Complaint on April 22, 2024. (Ex. C at 1, ¶ 3).
- c. Removal is timely because Defendant files this Notice of Removal within thirty (30) days after the service of the Complaint. See 28 U.S.C. § 1446(b)(1).

3. Further, Defendant removes this case to the proper venue pursuant to federal court pursuant to 28 U.S.C. § 1441.

- a. Plaintiff originally filed this suit against Defendant in the District Court of Otoe County, Nebraska. (Ex. A at 1, ¶ 3).
- b. The United States District Court for the District of Nebraska is the federal judicial district encompassing the District Court of Otoe County, Nebraska. See 28 U.S.C. § 107.

- c. This Court is the proper venue for this action. See 28 U.S.C. § 1441(a).
4. True and correct copies of all of the pleadings and papers filed in this action in the District Court of Otoe County, Nebraska, and/or served on Defendant are attached hereto and incorporated herein as Exhibit A. To Defendant's knowledge, no other pleadings or papers have been filed with such court.
 5. A true and correct copy of the Notice of Filing of Notice of Removal, which has been served on all parties and which will be filed with the District Court of Otoe County, Nebraska, is attached hereto and incorporated herein as Exhibit B.
 6. A true and correct copy of the Declaration of Kiley N. Schmidt in Support of Defendant's Notice of Removal is attached hereto and incorporated herein as Exhibit C.
 7. Nothing in this Notice of Removal shall be construed as an answer or response to the Plaintiff's Complaint in accordance with Rule 81 of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 81(c)(2).
 8. Defendant does not waive and expressly preserves any and all defenses to Plaintiff's claims, including, but not limited to, defenses based in law, equity, statute, constitution, jurisdiction, immunity, or any other defense or avoidance.
 9. Defendant requests trial of this matter in Lincoln, Nebraska.

WHEREFORE, Defendant Walmart, Inc., removes this action from the District Court of Otoe County, Nebraska, to the United States District Court for the District of Nebraska.

Dated this 20th day of May 2024.

WALMART, INC, Defendant,

By: /s/ Kiley N. Schmidt

Mark J. Goldsmith (NE #26429)

Kiley N. Schmidt (NE #27820)

of: BAIRD HOLM LLP

1700 Farnam Street, Suite 1500

Omaha, NE 68102-2068

Phone: 402-344-0500

mgoldsmith@bairdholm.com

kschmidt@bairdholm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was sent via email this 20th day of May 2024 to the following:

Evan D. Stein

Berry Law Firm P.C., L.L.O

6940 O Street, Suite 400

Lincoln, NE 68510

evan.stein@berrylawfirm.com

Attorney for Plaintiff

/s/ Kiley N. Schmidt

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